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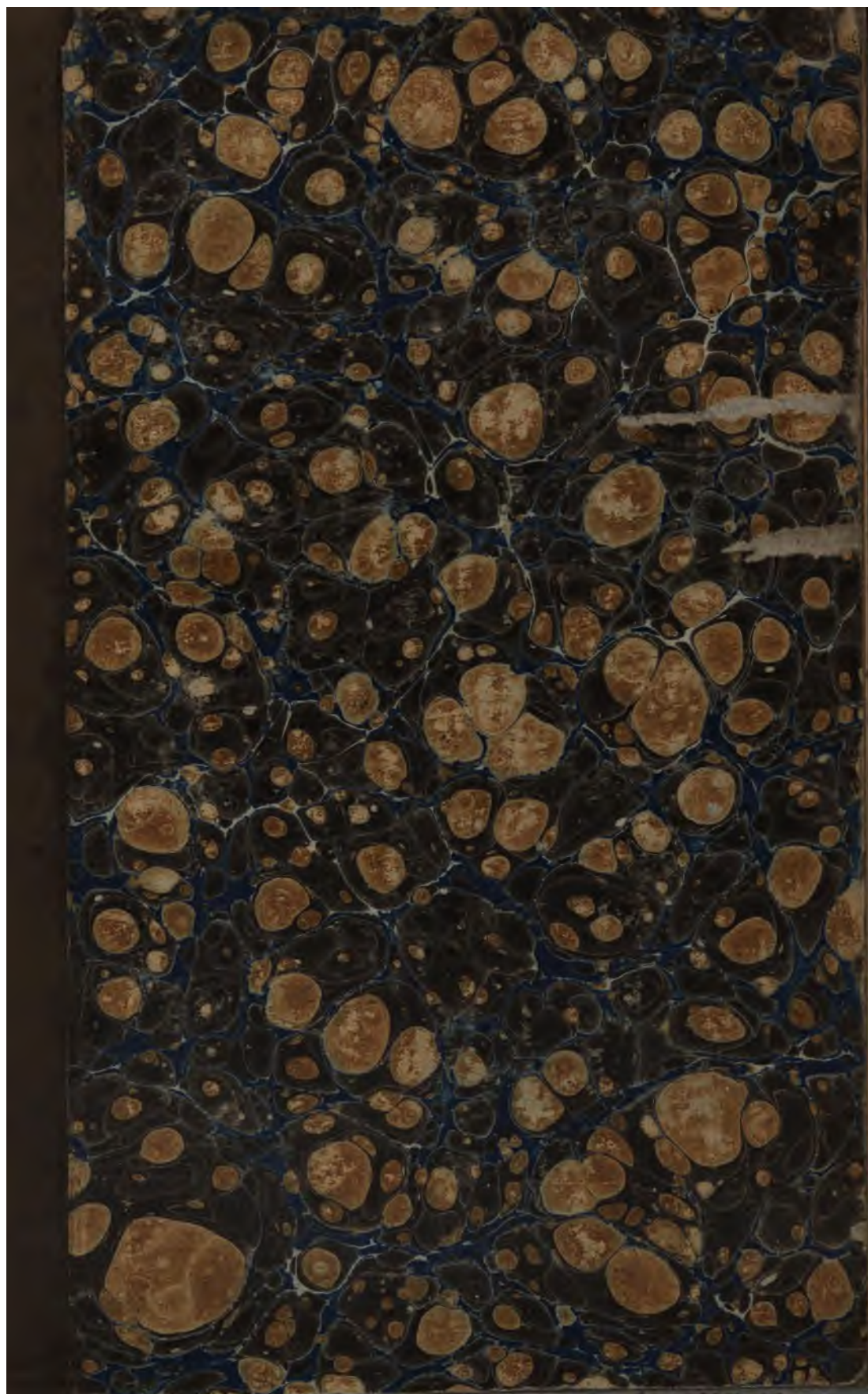
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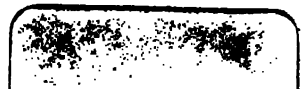


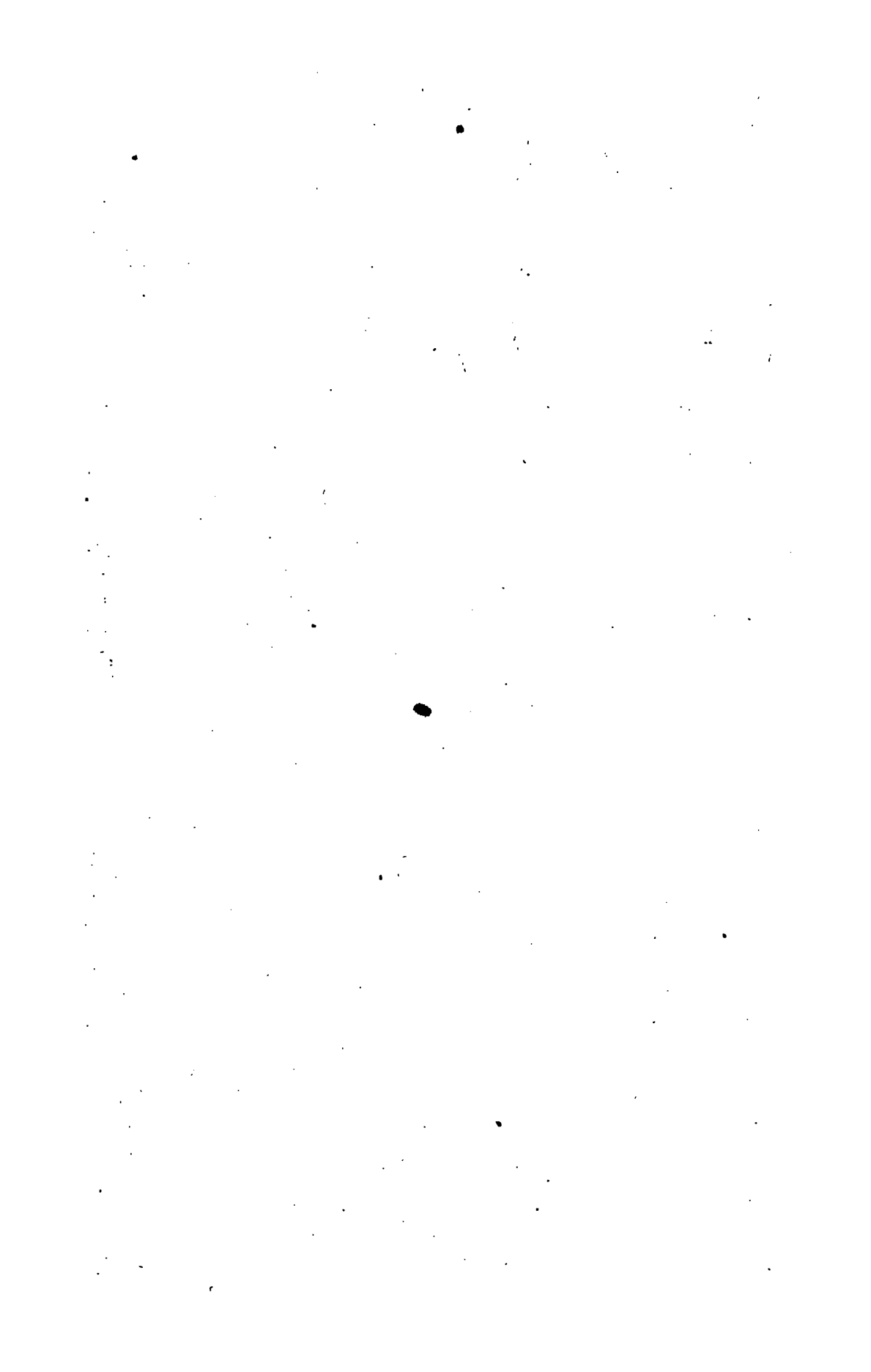


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THE SPEECH
OF
LORD DENMAN,
IN THE
HOUSE OF LORDS,
ON THE 27th OF JUNE, 1842,
ON MOVING THE SECOND READING OF A BILL,
ENTITLED,
“AN ACT TO PROVIDE
A GENERAL FORM OF AFFIRMATION
FOR ALL PERSONS WHO BELIEVE THE TAKING
OF ANY OATH TO BE FORBIDDEN BY
THEIR DUTY TOWARDS GOD.”

LONDON:
SAUNDERS AND BENNING, LAW-BOOKSELLERS,
43, FLEET STREET.
1842.



PRINTED BY RICHARD AND JOHN E. TAYLOR,
RED LION COURT, FLEET STREET.

THE debate in the House of Lords on the Affirmation Bill having been greatly compressed in the public papers by matters of more urgent temporary interest, it has been thought desirable to publish a full report of Lord Denman's Speech, which is believed to be a summary of the arguments in favour of his measure.

The Bishop of London admitted the importance of the principle of that measure, and wished it to be discussed in a Committee, which might examine the whole subject of the administration of oaths. No report is likely to be made during the present Session; but the learned prelate has pledged himself to apply his powerful mind to this question,—the discussion must proceed, the decision is not doubtful. Some indulgence must be given to those who,

for conscience' sake, have sought it from the Legislature; and it will be probably found that the measure proposed ought to be adopted without any material deviation from its present form.

Other objects are to be considered by the same Committee—whether the Law does not still impose oaths in many cases without necessity?—whether a more solemn mode of administering them may not be devised? In both these respects all practicable improvement should be adopted. But those best acquainted with Courts of Justice deny that there is anything irreverent in the manner commonly used, though the frequent repetition of the same formula has a necessary tendency to weaken its impression, and there must be great difficulty in securing solemnity to the act of swearing persons to the truth of written affidavits by the officers of the several Courts, either at Westminster Hall or at Judges' Chambers.

This observation is made for two reasons :—first, to mark the infinitely superior importance of the

measure proposed, and its independence of these minor objects; but also for the purpose of deprecating the habit of dwelling with too much of minute criticism on defects in the manner of administering oaths. However this may vary in the practice of different officers and of different Courts, the engagement to speak the truth is, in its nature, equally solemn and binding. The voice, the appearance, the gesture of the swearing officer, should neither be allowed to distract the witness's attention from the obligation to speak the truth, nor to furnish the least excuse for his violation of that sacred duty.

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MY LORDS,

I HAVE the honour to call your attention to a measure, which has appeared to me to be necessary, for the removal of a defect of no small magnitude in the administration of justice. On several occasions, when such defects have been brought to my knowledge, I have considered it, in some degree, as a duty attached to the high situation which I fill to attempt the application of a remedy. I have had the good fortune, with the assistance of your Lordships, to pass some measures, of a simple structure and of no pretensions, which have proved highly beneficial to the interests of suitors and the public.

The grievance to which I now advert is the exclusion of Truth—an inevitable consequence of the rejection of such witnesses as are convinced that they are forbidden by the word of God to take an oath. The remedy which is suggested is efficient and complete—it has the sanction of Experience as well as that of Reason.

This subject was first brought practically to my notice about four years ago, when two remarkable trials took place. A presbyterian gentleman was robbed and assaulted in Ireland, but the learned judges held his evidence inadmissible, because his conscience did not allow him to take the oath in the form which prevails in our Courts. About the same

time, at Liverpool, a similar outrage having been committed on a person who had formerly been a quaker, but had withdrawn from that society, his evidence was also rejected.

I endeavoured to prevent the recurrence of this evil by a general measure, which your Lordships did not approve: but the error committed by the judges of Ireland was corrected by a declaratory Act; and the privilege of affirming was extended by a new Act to such as had left the Society of Friends. On both occasions, however, the notorious criminal escaped from the hands of justice.

Nothing can appear more superfluous than to descant on the importance of freely admitting the Truth to be disclosed in Courts of Justice; it is the first object of their institution. The noble Duke (the Duke of Wellington) has frequently expressed his strong opinion upon this point, which indeed is too obvious to require or derive illustration from any authority. Yet it may not be improper to drop the general phrases to which all assent, without much consideration of their importance, and to remind your Lordships, in a few words, of the consequences that may daily arise from the exclusion of evidence from judicial inquiries. By the exclusion of evidence, the justest debt may be lost to the creditor; if it has been paid, the debtor may be deprived of the proof of payment, and compelled to pay it twice; in the ordinary occurrences of life, the wrong-doer may always triumph over the oppressed; the property of one man may be wrested from his

possession and transferred to a stranger; a fraudulent pretender may obtain a seat in your Lordships' House, which he knows to belong to another, and thus obtain the high privilege of enacting the laws of the land.

In the department of Criminal Law the evil is far greater. I have adverted to the escape of two criminals, through a supposed defect of the Law in one case and a real defect in another, swelling the long list of examples of impunity, which give a fatal encouragement to crime. That the great mass of crime is growing amongst us appears too probable, since the number of prosecutions and convictions is increased, and the causes of crime appear to be multiplied. The ordinary stimulants have been for a long season unusually active, and some may be found almost peculiar to the age in which we live. Attentive observers have thought that a portion of the literature of the day has assumed an unfortunate character, exciting the youthful mind, by tales and dramatic representations, to sentiments of the most vicious and debasing tendency, throwing a veil of romance over meanness and cruelty, and exhibiting them in an impossible alliance with heroic courage, generosity and friendship.

Many think that the love of notoriety,—that universal passion—has been so fostered and directed as to exercise a baneful influence on public morality, operating on two classes of the community most widely removed from each other, but producing through both the same injurious effects. Persons

raised above their fellows by rank, wealth and education, and still more by feelings of religion and humanity, carried to excess (if that be possible), have been supposed to indulge those feelings, and at the same time gratify the appetite for notoriety. They have made themselves conspicuous by ill-placed bounty towards the plunderer and the assassin; not content with exhorting them to penitence and prayer, and consoling them with a humble hope for mercy, they have surrounded them with the enjoyments of this world, and invested them with distinction and interest in the eyes of their fellow-creatures, which no other position could have earned for them. This patronage of criminals has displayed something like an indifference to crime; and the vilest and most abject have avowed that they have thus been tempted into outrages which have filled the public mind with horror and indignation.

Whatever causes may have aggravated the amount of crime, the fact should awaken our efforts to repress it; but the present law cripples our means of resistance by the needless exclusion of evidence. Allow me to ask, what would your Lordships have felt—how would the public mind have been affected—if any of the wretches who have lately polluted the Courts had departed without punishment through this defect? What, if a necessary witness to identify the open traitor, or to trace the proofs against the midnight murderer, had been reduced to silence by his own religious scruples, and the rigid exaction of an oath by the Law?

Even worse consequences might follow, in proportion as an erroneous conviction is more to be deprecated than the acquittal of guilt. Conspiracies to accuse falsely may be well laid; untoward circumstances may amount to proof; while the facts by which innocence can be established may be known to none but such as hold an oath unlawful. The present law shuts out the truth so tendered, and knowingly suffers the innocent man to be branded as a felon.

When such a combination of facts occurs, where all the admitted evidence condemns, the verdict must be founded upon it, and the sentence must follow. There is indeed an appeal to the Secretary of State; and if a clear and satisfactory exculpation were laid before that high functionary, though proceeding from non-jurors, he would undoubtedly remit the penalty and direct a pardon. But the means and opportunity of making out such a proof must ever be uncertain at the best; prejudice and clamor may drown the voice of truth; the feelings of the multitude may be inflamed by the public trial to a degree which would render all secret interference dangerous. Or if otherwise, why should the innocent man owe to favour what justice ought to secure for him? Why should he be pardoned who ought never to have been convicted? Why should the jury be compelled to bring in a false verdict, and the judge to pronounce an unmerited sentence? Why should justice be rendered unattainable by any other means than the defeat and exposure of the Law?

I am now to inform your Lordships that a large number of our fellow-subjects is in fact thus disqualified and excluded. They assign a literal meaning to the passage in the Gospel, and decline to take the oath which the Law would impose. The Baptists are a well-known and a very numerous sect. The whole body consists of above 100,000 in England, and 5000 in Scotland. I have this day laid on your Lordships' table a petition from seventy-nine churches of the Northern Association, representing a community which exceeds 50,000 persons. My noble friend (the Marquis of Lansdowne) lately presented a similar petition from an assembly of thirty churches in the South. Associations of less extent, and particular congregations, have also appealed to your Lordships' enlightened sense of justice and expediency. I have been in communication with many pastors of these numerous flocks, who assure me that, while they all desire to see this yoke removed, at least one in ten of the whole sect deems oaths unlawful, and would rather submit to any suffering than violate this religious duty. The sect of Independents has for many years maintained a respectable position in this country; a large proportion of them entertain the same opinion. Several members of other religious bodies, Christians of various denominations, some who adhere to all the other doctrines of the Church of England, and even some Roman Catholics, are conscientiously convinced that they ought not to take an oath, in defiance of what they deem a direct prohibition uttered by Divine Authority. I would that these

petitioners could state their own case, their opinions and their wishes personally to your Lordships, you would be convinced of their sincerity at least, and you would not see in their creed, however erroneous it should appear to you, the slightest reason for keeping them out of the protection of the Law. They are anxious to co-operate with their fellow-subjects in bearing all the burdens imposed upon them by the constitution. Their interests are affected in various ways:—young men, qualified by talent and study for the learned professions, are deterred by the preliminary oaths; clerks and inferior servants cannot find employment, because they cannot depose upon oath to facts of ordinary occurrence. Some gentlemen of high character have resigned important offices of considerable value, because they involved the administration of oaths.

Your Lordships will naturally inquire what corrective is now applied by the Law to the unquestionable evils which it produces. Before that corrective is described, the tale of grievance is but half told. The corrective is an intolerable aggravation. This is the substance of the controversy which arises in our Courts:—The person who attends his summons as a witness is ready to depose to the facts in his knowledge; he is told that he cannot be allowed to do so, unless he swears to speak the truth. Conscious of this duty, and prepared to discharge it, he still remonstrates against the oath; when peremptorily ordered to lay his hand on the Gospel and swear, he answers that he has meditated on that sacred

volume from his youth up, has yielded entire deference to its authority, and laboured to conform his life to its precepts, among which he finds none more direct and binding than the simple injunction—"Swear not at all!"

Nothing can be less important than my own sentiments on any matter of this kind; but I beg your Lordships to understand that I do not share this scruple, nor bring forward my proposal from any personal motive whatever. I have no wish to maintain the correctness of the non-juror's opinion beyond this:—that it is by no means too absurd to be sincere; that it neither bears that character of wild fanaticism that impeaches the understanding, nor is so obviously contradictory to reason as to draw motives into suspicion. The rules of biblical criticism may fully justify those who believe oaths to be lawful; but the adherence to the plain words of the New Testament, however satisfactorily shown to originate in error, is an error of a very different kind from that of engrafting something arbitrary and extraneous upon them.

The non-juror is all this time standing before the tribunal. He has given his plain reason for refusing to take the oath, and persists in his refusal. What duty does the Law impose on the presiding magistrate? Hitherto, my Lords, I have pleaded for the public against the exclusion of testimony; I have pleaded for individuals who are virtually outlawed by their exclusion: I now plead for the magistrate, and beseech your Lordships to attend to the situa-

tion in which he is placed. There is but one duty imposed upon him by the Law in this crisis—the duty of menace and coercion. He must warn the reluctant Christian that much temporal annoyance awaits him, if he perseveres in what he deems his duty to God. If the warning succeed, if the courage give way under the threat, his compliance degrades him in his own estimation and in the face of the world; by consenting to become a witness, he proves himself unworthy of credit. If he still refuse, the magistrate has no alternative. However he may respect the conscientious scruple, though from personal acquaintance he may know its sincerity, he is compelled to refuse the proffered testimony, in which he would fully confide, and for want of which his judicial power is paralysed; and he must consign his fellow-subject to a dungeon for the crime of too faithful an obedience to the declared will of the Saviour of mankind.

Such scenes have recently been presented, reflecting little honour on religion or on justice. The unseemly spectacle will be the more strange, if it happen that the non-juror who is hurried into custody should at the same moment hear testimony given on affirmation by one who was formerly a quaker;—if he should see both a quaker and a separatist actually seated in the jury-box, to decide on the life of a fellow-creature without an oath. To them the Law has granted this privilege merely because they hold the faith for which their fellow-Christian is proscribed and punished.

The only principle on which this severity is now inflicted, is that of making the non-juror an example to others in the like case offending. The state has formed one opinion on a religious point, and is resolved that none of its subjects shall hold a different one. Let us not disguise from ourselves that here the spirit of persecution is in full operation, but let us consider what hope of success the attempt holds out.

In an interesting volume (for which I am indebted to the kindness of its author, Mr. Chambers), — ‘A Collection of American Criminal Trials’ — I have lately read a narrative of proceedings against the quakers in the middle of the seventeenth century, in the colony of Massachusetts. Many suffered death for their opinions, and those opinions were but the more widely diffused. The colony of Rhode Island pursued the opposite course. There they were left unmolested, and the heresy died away. In this country, about the same period, the quakers underwent severe sufferings, and one of the greatest enormities ascribed to them was, the tenet that oaths were unlawful. For acting upon it, they were exposed not only to fine and imprisonment, but might be transported for life. We learn, from 7th Will. III., that “divers dissenters, called quakers, refusing to take an oath in Courts of Justice and other places, are frequently imprisoned, and their estates sequestered by process of contempt issuing out of such Courts, to the ruin of themselves and their families.” But was their conversion effected,

or their scruples overcome? Quite the contrary. They persisted in their refusal to swear, and Parliament, which had visited them with punishment so dreadful, now gave their affirmation the force of an oath, and attached the same consequences to its falsehood. The indulgence was at first qualified, and confined to evidence in civil causes; but it has gradually been extended to all cases whatever, and by the present law they are even permitted to perform the office of jurymen without that ceremony from which juries derive their name.

The Moravians cannot with propriety be called dissenters. The Act describes them as an ancient episcopal church. The belief that oaths are prohibited is not an article of their faith, but an opinion held by many members of their body. The privilege of affirming, instead of swearing, has been granted to them all, and, at a subsequent period, to persons denominated separatists.

Emboldened by an experiment which is universally allowed to have been followed by complete success, I commend this general measure to the favour of your Lordships. Instead of exclusion, persecution, and measures of relief, partial, occasional and imperfect, I respectfully entreat you to withhold from none the right of disclosing the truth, for the protection of themselves and the community—a right which has been granted to others on the same principle, and is not even suspected of having ever been abused.

I am aware, my Lords, that strong objections are

felt, and by persons of high authority, to my proposal. I have felt an earnest wish to understand and appreciate them ; but what was urged on former occasions I have examined with all the attention in my power, and I frankly avow that my difficulty has been to find either reason or argument to contend with.

Some persons really imagine that the imposition of an oath is all-sufficient for obtaining truth ; these are few and inexperienced indeed ; but even if their dream was true, it ought not to prevent us from obtaining the truth, wherever and on whatever terms it can be secured.

Some also have assumed that a measure permitting oaths to be dispensed with, would lead to their abolition. I ask why this should be ? It is neither the object, nor the natural effect of the measure. The great bulk of those who come forward as witnesses come forward to speak the truth. There seems to be no reason for their refusing to give it all the credit which the most solemn sanction can impart. I never heard that the quaker infects his neighbour with aversion to an oath, or the love of affirming in preference. The supposition rests on no reason that I can discover, when the witness is honest and desires to speak the truth.

That many are of a very different character, no man conversant with our Courts will deny. It is well known that witnesses may be hired to swear anything ; and it is objected that those who are relieved from the necessity of swearing will be still

more ready to deceive. But the first proposition answers the second. If the suborner can be sure of purchasing a false oath, he need not look out for a false affirmation. He would only expose himself to greater danger of failure and disgrace. The penal sanctions of the Law are alone efficient to deter men without principle from falsehood ; such may indeed be found among affirmants, as they constantly are among swearers ; but the imprudence of raising an additional argument against their being believed by a departure from the ordinary forms, will guarantee the public against the attempt.

The next form of objection has always struck me as a sarcasm against religion itself. Many (it is said) will state a falsehood by way of affirmation, whom the terror of an oath might retain within the bounds of truth. For my part, well convinced that the love of truth itself is the natural fruit of religious feelings, I am slow to believe that a sincere reverence to the Almighty can be found in company with the contempt of truth, and indifference to the welfare of his creatures. A scene occurs not seldom in judicial proceedings which may have given birth to this opinion. A witness who appears to be misrepresenting facts is reminded of his *oath*, and falters ; he is asked whether he will *swear* what he has stated, and he instantly retracts the assertion. Hence it is inferred that the form and ceremonial of an oath are necessary to command and control him, where mere affirmation would fail.

Those who have thus, with much self-gratulation,

brought back a witness to a sense of his duty ought however to bear in mind that their appeal is not made to the conscience only, or solely on religious grounds. It is a warning of the temporal, as well as the eternal consequences of perjury. It savours of the jail, of transportation, of the pillory, which, though abolished, is not perhaps wholly forgotten. But there is no doubt that the religious principle may also be called into action by a solemn adjuration. Suppose the witness had promised, in the impressive form now employed by quakers, and copied in this Bill, would not the effect on a religious mind be equally strong? Would a real Christian be more affected by the name of an oath, than by the admonition that he had declared his inability to take one, on account of the prohibition of Christ himself, but that he had solemnly promised to affirm the truth in the presence of the Almighty? We cannot doubt it, unless we persuade ourselves, with as little reason as charity, that all who profess the scruple regarding oaths are hypocrites, who practise a fraud that they may utter falsehood with impunity.

If there are really those who seriously believe that they can elude the Divine Vengeance by false affirmation, if made without the ceremony of an oath, a little legerdemain will gain their object, though they may pretend to perform it with the gravest decorum.

My noble and learned friend, whose hostility to this measure I have so much reason to fear (Lord Wynford), anticipates me in the mention of a trick

often suspected, when the witness imprints the kiss on his thumb instead of the book. If he has executed this manœuvre without detection, your threats will not shake his nerves; he has not sealed the bond, and cannot incur the penalty; or he will find some other salvo for his conscience—a mental reservation or a plausible exception for this single case, and the resolution to make speedy atonement for his sin by some acceptable service. On minds thus half-witted and unprincipled, religion has no real hold; the true method with them is not to yield to their contemptible self-delusions, but to give them better instructions on their duty towards God and their fellow-creatures. Their waywardness, their ignorant prejudice, is only less absurd than it would be to shape our legislation by deference to them, and, on their account, to refuse to thousands of honourable and truly religious men the relief to which they are entitled.

The objection comes round—"How can we know that the witness really feels the scruple? We have only his own word for it." The answer is, that you have no other knowledge of any opinion entertained by any man. That he who with his head covered swears on the Old Testament, is a Jew; that he who calls for the Koran, is a follower of Mahomet; nay, that a member of the Church of England is a Protestant, or even a Christian, you know from nothing but their own assertions or conduct. The security against this species of deception is, that no sane man can have a rational motive for stating an untruth

upon the subject. If bent on fraud and falsehood, how easy to claim the privilege of a quaker, a Moravian, a seceder from the Society of Friends, or a separatist. You are already at the mercy of all who choose to give themselves these descriptives; but with the sanction of penal consequences before their eyes—the fear of degradation and exposure in society—no one is found to run the risk attending this preliminary falsehood. An abuse of a different kind might be apprehended. Irsome and injurious as it is to classes of men to be excluded by conscientious opinions from giving evidence, many individuals are interested in avoiding that duty. In almost every case there are some who, from fear or interest, wish to conceal their knowledge, to screen the culprit, or withhold their testimony from those unjustly accused. They may affect the scruple for the very purpose of being rejected, and leave the Court under false colours.

On some former occasions an attempt has been made to disarm opposition to measures like the present, by granting the privilege to those only who shall have registered their names at some public office some time before they come forward as witnesses. This would provide security against an abuse apprehended by some—the false assumption of scruples merely for a particular trial.

Convinced as I am that there is no such danger, I am no proper person to devise any security against it. But if your Lordships should deem it prudent and advisable, I would give the most respectful at-

tention to any proposal of that kind, which could be fully discussed in Committee. Those whose petitions I have presented would accept with gratitude the boon I ask for them, even if accompanied with such a condition, though perhaps the public advantage of the measure would be rendered less complete.

In conclusion, my Lords, deeply convinced that I have brought to your knowledge an evil of considerable and probably of increasing magnitude, and have suggested a safe and a perfect remedy for it, I have the honour to propose that this Bill be now read for the second time.

A Bill intituled An Act to provide a general Form of Affirmation for all Persons who believe the taking of any Oath to be forbidden by their Duty towards God.

WHEREAS it highly concerns the interests of truth and justice that all trustworthy persons should be receivable as witnesses in judicial inquiries ; but many such persons, though desirous to give evidence, are not only excluded by law, but are also exposed to heavy penalties, because they conscientiously believe the taking of any oath to be forbidden by the law of God : and whereas it seems just and expedient that the evidence of all such persons should be admitted by way of affirmation, as is now provided by several Acts of Parliament in favour of Christians of certain denominations : now

be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act it shall be lawful for any such person, on any lawful occasion in any court of justice or elsewhere, to make the following declaration:—

“ I *A. B.* do solemnly and sincerely declare, that I believe in my conscience that the taking of any oath is contrary to the law of God.”

And that such person shall then be permitted, instead of an oath, to make his solemn affirmation in the words following:

“ I *A. B.* do solemnly affirm and declare,”

which affirmation shall be adjudged and taken to be of the same force and effect, to all intents and purposes, in all courts of justice and other places where by law an oath may now be required, as if such person had taken an oath in the usual form.

And be it enacted, that if any person making such solemn affirmation shall wilfully, falsely and corruptly affirm any matter or thing which, if sworn to, would have amounted to wilful and corrupt perjury, such person shall be deemed guilty of wilful and corrupt perjury, and being convicted thereof shall suffer the punishment due to that offence.

A similar Bill was presented by Lord Denman to the House of Lords in 1838, referred to a Select Committee, and ultimately rejected. In the collection of Lord Holland's protests there are two against the rejection.

A similar measure passed the House of Commons in 1840, and was thrown out by the House of Lords. It contained a clause for the registry of non-jurors, and the principal arguments against the Bill were drawn from defects in the form of registration contained in it.

Early in the present Session Lord Denman introduced a measure for the relief of such of the Baptist body as feel the scruple against oaths, in consequence of the numerous petitions from that body, and a notice (encouraged by some expressions in former debates) that members of a known sect would be admitted to the indulgence prayed. But this Bill was withdrawn, owing to an unwillingness professed in many quarters to grant any partial measure of relief.

THE END.

